

RESOLUTION

BY COUNCILMEMBER KWANZA HALL:



A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT AND EXECUTE AGREEMENTS TO PERMIT THE INSTALLATION OF A FOUNDATION SYSTEM THAT INCLUDES TIE-BACK RODS AND A SHORING SYSTEM WITHIN AND UNDER THE PUBLIC RIGHTS-OF-WAY OF: (1) BOULEVARD PLACE ABUTING REAL PROPERTY COMMONLY KNOWN AS 555 BOULEVARD f/k/a 559 BOULEVARD; AND (2) BOULEVARD ABUTING REAL PROPERTY COMMONLY KNOWN AS 555 BOULEVARD f/k/a 559 BOULEVARD, SAID RIGHTS-OF-WAY LYING AND BEING IN LAND LOT 47 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, WHEREIN THE GRANTEE RESERVES THE RIGHT TO LIMIT AND REGULATE THE USAGE OF THE SURFACE, SUBSURFACE AND AERIAL SPACES WITHIN THE RIGHTS-OF-WAY; TO PROVIDE CONDITIONS FOR ALLOWING SAME, AND FOR OTHER PURPOSES.

WHEREAS, Gabriella Nanci and Timothy Just (herein collectively, the "Owner") is the fee simple owner of a certain parcel of land adjoining the public rights-of-way of Boulevard and Boulevard Place, located in Land Lot 47 of the 14th District of Fulton County, Georgia, as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (herein, the "Lot"); and

WHEREAS, Owner desires to obtain permission from the City of Atlanta to install a foundation system that includes Tie-Back Rods and a Shoring System within and under the rights-of-way below the surface of Boulevard and Boulevard Place.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA THAT:

1. The Mayor is authorized to accept and execute on behalf of the City of Atlanta agreements between the City and Owner, which permits Owner to install a foundation system that includes Tie-Back Rods and a Shoring System within and under the rights-of-way below the surface of Boulevard and Boulevard Place for the benefit of development on the Lot;
2. The Commissioner of Public Works, acting as the Mayor's designee, is authorized to review and approve the terms and conditions for the construction, installation and de-tensioning of said foundation system that includes Tie-Back Rods and a Shoring System within and under the rights-of-way below the surface of Boulevard and Boulevard Place, and to review and approve the plans for any construction, installation, relocation and/or modification to the referenced Tie-Back Rods and a Shoring System; and
3. The City Attorney is hereby directed to provide and review the agreements for execution by the Mayor, to be approved by the City Attorney as to form; and

4. These agreements shall not become binding upon the City and the City shall incur no liability upon same until such agreements have been executed by the mayor and delivered to Owner.

ADOPTED by the Council: _____

APPROVED by the Mayor: _____

A true copy,

Municipal Clerk, CMC

AFTER RECORDING RETURN TO:
GABRIELLA NANCI
165 Cortland St., A-234
Atlanta, Georgia 30303

TIE-BACK EASEMENT AGREEMENT

THIS TIE-BACK EASEMENT AGREEMENT, (herein, the "Agreement") is made and entered into the _____ day of _____, 2007, by and between CITY OF ATLANTA (herein, "Grantor") and GABRIELLA NANCI and TIMOTHY JUST, (herein collectively, "Grantee").

WITNESSETH:

WHEREAS, in consideration of the sum of TEN DOLLARS (U.S. \$10.00) and other good and valuable consideration paid by each party unto the other, the receipt and sufficiency of which is hereby acknowledge, the parties to hereby agree as follows:

1. **Background.**
 - a. Grantor is the owner of all that tract or parcel of PUBLIC STREETS and being in Fulton County, Georgia known as Boulevard and Boulevard Place abutting real property commonly known as 555 Boulevard, f/k/a 559 Boulevard, being more particularly described on plat filed at Plat Book 314, Page 58, Fulton County, Georgia records, a copy of which is attached hereto as Exhibit "A", and incorporated herein by reference (herein, "Grantor's Property").
 - b. Grantee is the Owner of all the tract or parcel of PRIVATE LAND commonly known as 555 Boulevard, f/k/a 559 Boulevard, lying and being in Fulton County, Georgia, reflected on Exhibit "A" and being more particularly described on Exhibit "B", a copy of which is attached hereto as and incorporated herein by reference (herein, Grantee's Property").
 - c. Grantee is developing the Grantee's Property as a 5-Story, Mixed Use Residential-Commercial building (herein, Grantee's Improvements").
2. **Grant of Easement.** Grantor does hereby grant to Grantee and Grantee's employees, agents, and contractors, a temporary non-exclusive easement (herein, the "Tie-Back Easement") beneath that portion of the Grantor's Property that abut Grantee's Property as identified on Exhibit "A" (herein, the "Tie-Back Easement Area") for the purposes of installing tie-back rods and other supporting materials as necessary and appropriate to construct, install and maintain the shoring system in support Grantee's Improvements upon Grantee's Property (herein, the "Tie-Backs"). The temporary easement granted hereby will terminate at the earlier of (i) such time as Grantee has completed construction of the concrete wall which the Tie-Backs support, together with their permanent supporting structures; or (ii) thirteen months from the date hereof.
3. **Easement Fee.** As consideration for the grant of the Tie-Back Easement, Grantee shall pay to Grantor the sum of Ten Dollars (U.S. \$10.00) (herein, the "Easement Fee").

4. Authority. Grantor represents and warrants that Grantor has full power and authority to enter into this Agreement and to grant the Tie-Back Easement provided for herein, without consent of any other party.
5. Repair of Property. Any and all damage to the Grantor's Property or the improvements or landscaping located thereon resulting from Grantee's exercise of its rights hereunder shall be promptly repaired at the sole cost and expense of Grantee. In all events, Grantee will use and enjoy the easements granted to Grantee in such a manner as to minimize, to the extent reasonably practicable, any interference with any business or other operations on the Grantor's Property.
6. Lien-Free Construction. Grantee agrees to bear all expenses incurred in performing the work contemplated hereunder. Grantee covenants and agrees that it will not cause or suffer any lien or claim of lien to be filed against any portion of the Grantor's Property as a result of work or maintenance done or caused to be done by Grantee under the provisions of this Agreement. In the event any such lien or claim of lien is filed, Grantee will remove or bond over the same within thirty (30) days after the filing thereof. If Grantee fails to fulfill such obligations as provided above, Grantee may pay or perform the same and the costs thereof shall be reimbursed by Grantee to Grantor upon demand.
7. Indemnification. Grantee shall indemnify and hold harmless Grantor, and its officers, agents and employees (herein collectively, the "Grantor Indemnities") from and against any and all liabilities, losses, costs, damages, and expenses of whatsoever nature that may be incurred by the Grantor Indemnities, or any of them, and arising out of or in connection with personal injury or death of persons, or any loss, destruction or damage to the Grantor's Property, where any such personal injury, death, loss, destruction, damage, lien or claim thereof results in whole or in part from the acts or omissions of Grantee, its employees, agents, guests, invitees, representatives, contractors, and/or consultants or any of them, which acts or omissions are related to the exercise of the easement rights and other rights granted herein.
8. Insurance. Grantee shall cause all persons and entities entering the Tie-Back Easement Area on Grantor's Property at Grantee's request to maintain adequate and appropriate insurance to cover risks of the type described in Section 7 above.
9. Warranties. Grantee represents and warrants to Grantor: (i) that Grantee is the lawful owner of the Grantee's Property; (ii) that there are no easements, grants, deeds to secure debt, restrictions, liens, claims or encumbrances against or affecting Grantor's exercise of its rights under this Agreement; and (iii) that Grantee has full right, power and authority to enter into, execute and deliver this Agreement.
10. Reservation. Grantor hereby reserves all right, title and interest in and to the fee simple estate of Grantor's Property incident to the Tie-Back Easement Area and for any and all purposes not inconsistent with the Grantee's use of the Tie-Back Easement Area as expressly permitted herein.
11. Miscellaneous:
 - a. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent., and the breach of any covenant by any party hereto shall not discharge or release such party from its or their obligations hereunder.
 - b. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall

be limited to the extent necessary to render the real covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein, or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal, or unenforceable, the validity of the remainder of the terms, provisions, covenants or agreements or the application of such term, provisions, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

- c. No provision of the Agreement may be modified or amended, in whole or in part, without the prior written consent of all parties hereto.
- d. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective legal representatives, successors, successors-in-title, heirs, grantees and assigns. All of the terms, provisions, rights, covenants, restrictions, easements and licenses set forth in this Agreement shall be appurtenant to and shall run with the real property which is thereby burdened or benefited.
- e. Any notice required or permitted to be delivered hereunder shall be in writing, signed by the party giving such notice or its attorney at law and shall be deemed to be delivered: (a) when the same has been received via the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the party to whom such notice is sent, receipt being evidenced by the return receipt therefore; (b) when personally delivered by commercial courier service or other messenger maintaining evidence of delivery; or (c) when transmitted by facsimile evidenced by a confirmed receipt and followed by delivery in accordance with clause (b) of this paragraph. For purposes of notice, the addresses of the parties, until changed as herein provided, are as follows:

Grantor: City of Atlanta
Department of Public Works
55 Trinity Avenue
Atlanta, Georgia 30303
Phone: (404) 330-6418
Facsimile: (404) 658-7178

Grantee: Gabriella Nanci or Timothy Just
165 Cortland St., A-234
Atlanta, Georgia 30303
Phone: (760) 803-0062

- f. All tie-backs will be released at the completion of the project. We do not foresee any tie-backs to within ____ feet of the surface.
- g. All exhibits referred to in this Agreement and attached hereto are hereby incorporated into and are a part of this Agreement.

TO HAVE AND TO HOLD the aforescribed rights and Tie-Back Easement to Grantee in accordance with the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY:

MAYOR

ATTEST:

MUNICIPAL CLERK (SEAL)

APPROVED:

COMMISSIONER, DEPARTMENT
OF PUBLIC WORKS

APPROVED AS TO FORM:

CITY ATTORNEY

GRANTEE:

GABRIELLA NINCI
165 Cortland St., A-234
Atlanta, Georgia 30303

ATTEST:

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____
[SEAL]

TIMOTHY JUST
165 Cortland St., A-234
Atlanta, Georgia 30303

ATTEST:

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____
[SEAL]

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 47 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, BEGIN AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF BOULEVARD PLACE (50 FOOT RIGHT OF WAY) AND THE EASTERLY RIGHT OF WAY OF BOULEVARD (80 FOOT RIGHT OF WAY). THENCE RUN EASTERLY ALONG THE SOUTHERLY RIGHT OF WAY OF BOULEVARD PLACE 100.82 FEET TO A POINT, THENCE RUN EASTERLY ALONG THE SOUTHERLY RIGHT OF WAY 42.00 FEET TO A POINT; THENCE RUN EASTERLY ALONG THE SOUTHERLY RIGHT OF WAY OF BOULEVARD PLACE 42.00 TO A PIN PLACED; THENCE RUN SOUTH 03 DEGREES 13 MINUTES 46 SECONDS WEST 90.00 FEET TO A POINT; THENCE RUN NORTH 87 DEGREES 49 MINUTES 08 SECONDS WEST 2.16 FEET TO A POINT; THENCE RUN SOUTH 03 DEGREES 03 MINUTES 21 SECONDS WEST 95.47 FEET TO A PIN PLACED; THENCE RUN NORTH 87 DEGREES 59 MINUTES 35 SECONDS WEST 182.00 FEET TO A POINT FOUND ON THE EASTERLY RIGHT OF WAY OF BOULEVARD; THENCE NORTH 03 DEGREES 12 MINUTES 40 SECONDS EAST ALONG THE EASTERLY RIGHT OF WAY OF BOULEVARD 186.02 FEET TO A POINT AND THE POINT OF BEGINNING, ALL AS SHOWN ON PLAT OF SURVEY DATED OCTOBER 25, 2006 BY SOLAR LAND SURVEYING COMPANY, JOHN W. STANZILIS, JR., BEING A LOT CONSOLIDATION PLAT FOR 559 BOULEVARD